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Recording Requested by:

After Recording return to:

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

REGULATORY AGREEMENT FOR HEALTH CARE FACILITIES
UNDER SECTION 232 OF THE NATIONAL HOUSING ACT, AS AMENDED

Replaces HUD 92466, 92466-NHL, 2466-e,

HUD Project No.:Lender:Original Principal Amount of Multifamily/Health Care Facility Note:Date of Note:Security Instrument Recorded:StateCountyDateBook/VolumePageInstrument/Document Number

Borrower: Profit-Motivated _____ Limited Dividend _____ Public Body _____
Non-Profit _____

Type of Facility The Borrower and Lessee, if applicable, shall suitably equip and operate the Project as a (check applicable provision.):

- ☐ Nursing Home
☐ Intermediate Care Facility
☐ Board and Care Facility
☐ Assisted Living Facility
☐ Combination of above (Specify per commitment)_____

Processed under:

- ☐ MAP
☐ TAP

(Failure to check the appropriate spaces shall not affect the enforceability of this Agreement or its application to the appropriate type of Health Care Facility, as determined by reference to the HUD firm commitment for the Project.)

Indicate number of beds and/or units and deviation in such number from the Certificate of Need or other operating authority, if any:

This Agreement is entered into this ____ day of _____, 20__, between or among _____, a _____ organized and existing under the laws of _____, whose address is _____, its successors, heirs, and assigns (jointly and severally) (Borrower), _____, a _____ organized and existing under the laws of _____, whose address is _____, its successors, heirs, and assigns (jointly and severally)[Lessee and/or Operator of a Health Care Facility, if applicable], and the Secretary of Housing and Urban Development, his or her successors, assigns or designees (HUD).

In consideration of, and in exchange for an action by HUD, HUD, the Borrower and the Lessee and/or Operator of a Health Care Facility, if applicable, agree to the terms of this Agreement. The HUD action may be one of the following: the endorsement for insurance by HUD of the Note, the consent of HUD to the transfer of the Mortgaged Property, the sale and conveyance of the Mortgaged Property by HUD, or the consent of HUD for other actions related to the Borrower and

Lessee, and/or Operator or to the Mortgaged Property.

Further, the Borrower, HUD and the Lessee and/or Operator, if applicable, execute this Agreement in order to comply with the requirements of the National Housing Act, any related legislation, regulations, and administrative requirements adopted by HUD. This Agreement shall continue during such period of time as HUD shall be the owner, holder, or insurer of the

Note, or is obligated to protect rights of residents of the Mortgaged Property.

Violation of this Agreement or of the regulations and Directives of HUD may subject the Borrower, {and the Lessee and/or Operator,} if applicable, and related parties to adverse actions. See Article VII below.

AGREEMENTS: The Borrower, HUD {and the Lessee and/or Operator} covenant and agree as follows:

I. DEFINITIONS

1. **DEFINITIONS.** The following terms, when used in this Agreement (including when used in the above recitals), shall have the following meanings, whether capitalized or not and whether singular or plural, unless, in the context, an incongruity results:

a. **"Affiliate"** Persons and entities are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person or entity which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person or entity.

b. **"Assisted Living Facility (ALF)"** means a public facility, proprietary

facility, or facility of a private non-profit corporation that is licensed and regulated by the State, municipality or other political subdivision where the Project is located. The Borrower must make available to the residents supportive services necessary to carry out activities of daily living, provide separate dwelling units for the residents and provide facilities appropriate for the provision of supportive services. Residency in an ALF is restricted to persons 62 years of age and older and having a need for assistance in three or more activities of daily living.

c. **"Bed Authority"** means any and all rights and documentation pertaining to the maximum number of beds allowed, including certificates of need (CoN) where issued, required by and granted or to be granted by the State of jurisdiction and its political subdivisions for operation of the project.

d. **"Board and Care Home"** means a proprietary residential facility or a residential facility owned by a private nonprofit corporation or association that provides room, board and continuous protective oversight and which facility is regulated by a State in accordance with Section 1616(e) of the Social Security Act.

e. **"Borrower"** means all persons or entities identified as "Borrower" in the first paragraph of the Security Instrument, together with any successors and assignees. Borrower shall include any person or entity taking title to the Mortgaged Property whether or not such person or entity assumes the Note. Whenever the term "Borrower" is used herein, the same shall be deemed

to include the Obligor of the debt secured by the Security Instrument and shall also be deemed to be the Mortgagor as defined by the National Housing Act, as amended, implementing regulations and Directives.

f. **“Directives (of HUD)”** includes written guidance issued by HUD, at the time of origination and subsequently, relating to HUD’s Health Care Facility insurance programs under the National Housing Act, as amended, and any successive legislation. Directives include handbooks, guidebooks, Notices, Mortgagee Letters and other written directives issued by HUD whether or not published in the Federal Register.

g. **“Distribution”** means any disbursement, conveyance or transfer of cash, any asset of the Borrower, or any portion of the Mortgaged Property, including the segregation of cash or assets for subsequent withdrawal as Surplus Cash, other than in payment of expenses that are determined by HUD to be reasonable and necessary.

h. **“Fixtures”** means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, whether acquired now or in the future, including: machinery, equipment (including medical equipment and systems), engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, computers, medical systems, security, fire prevention, or fire detection or

otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposals, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants.

i. **“Governmental Approval”** means any license, permit or certificate of need or other approval, necessary and required by the State or the municipality or other political subdivision in which the facility is located in order to operate the Project and to receive benefits under a provider agreement with Medicaid, Medicare or other assistance required by HUD’s commitment to insure the Security Instrument.

j. **“Health Care Facility”** means, but is not limited to, a skilled nursing home facility, intermediate care facility, board and care home and assisted living facility and supplemental loans to finance improvements, additions and equipment to these Health Care Facilities as authorized under the National Housing Act or other applicable federal law.

k. **“HUD”** means the United States Department of Housing and Urban Development acting by and through the Secretary in the capacity as insurer or

holder of the loan secured by the Security Instrument under the authority of the National Housing Act, as amended, the Department of Housing and Urban Development Act, as amended, or any other federal law or regulation pertaining to the loan (as evidenced by the Note) or the Mortgaged Property.

l. **"Intermediate Care Facility"** means a proprietary facility or a facility of a private nonprofit corporation or association licensed or regulated by the State, municipality or political subdivision where the facility is located. The facility must provide for the accommodation of persons who, because of incapacitating infirmities, require minimum, but continuous care, and are not in need of continuous medical or nursing services. In addition the term Intermediate Care Facility may include such additional facilities as may be authorized by HUD for the nonresidential care of elderly individuals and others who are able to live independently, but who require care during the day.

m. **"Impositions" and "Imposition Deposits"** are defined in the Security Instrument.

n. **"Improvements"** means the buildings, structures, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

o. **"Indebtedness"** means the principal of, interest on, and all other amounts due at any time under the Note or the Security Instrument, including

prepayment premiums, late charges, default interest, and advances to protect the security as provided in the Security Instrument.

p. **"Land"** means the estate in realty described in Exhibit A.

q. **"Lease(s)"** means all present and future leases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases and non-residential leases), and all modifications, extensions or renewals. In particular, Lease may also mean, but is not limited to, (1) the agreements between the Borrower/Lessor and the operator/Lessee of the facility by which the Lessee agrees to operate and manage the facility, and/or portion thereof; (2) any agreement between the Health Care Facility and a Lessee/provider of medical and related services proper and necessary for the care and treatment of persons who are acutely ill who require medical or health care customarily, or most effectively, provided for by Health Care Facilities; and (3) an 'Admission Agreement,' which is a resident's lease arrangement with a Nursing Home, Board and Care Home, or ALF.

r. **"Lender"** means the entity identified as "Lender" in the first paragraph of the Security Instrument, or any subsequent holder of the Note, and whenever the term "Lender" is used herein, the same shall be deemed to include the Obligee, or the Trustee(s) and the Beneficiary of the Security Instrument and shall also be

deemed to be the Mortgagee as defined by the National Housing Act, as amended, implementing regulations and Directives.

s. **"Lessee of a Health Care Facility", or "Lessee"** means an entity which has a lease or other agreement with the Borrower to operate and manage a Health Care Facility to provide housing, medical and related services that are proper and necessary for the care and treatment of the residents.

t. **"Limited Dividend Borrower"** means a limited dividend corporation or other limited dividend entity which is restricted by Federal or State law or by HUD as to rate of return and other aspects of its operation.

u. **"Mortgaged Property"** means all of the Borrower's present and future right, title and interest in and to all of the following:

- (1) The Land;
- (2) The Improvements;
- (3) The Fixtures;
- (4) The Personalty;
- (5) All current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and

roads which may have been or may in the future be vacated;

(6) All proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirement;

(7) All awards, payments and other compensation made or to be made by any municipal, State or Federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;

(8) All contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

(9) All proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;

(10) All Receivables and Leases;

(11) All earnings, royalties, instruments, accounts, accounts receivable, supporting obligations, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by the Security Instrument;

(12) All Imposition Deposits;

(13) All refunds or rebates of Impositions by any municipal, State or Federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which the Security Instrument is dated);

(14) All names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property; and

(15) Mortgaged Property also includes, but is not limited to, any and all licenses, Bed Authority, and/or Certificates of Need required to operate the facility and receive the benefits and reimbursements under a provider agreement with Medicaid, Medicare, any State or local program, health care insurers or other assistance providers relied upon by HUD to insure the Security Instrument, to the extent allowed by law and regardless of whether such rights and contracts are held by the Borrower, Lessee or an Operator. Mortgaged Property also includes all receipts, revenues, income and other moneys received by or on behalf of the Health Care Facility, including all accounts receivable, all contributions, donations, gifts, grants,

bequests, all revenues derived from the operation of the Health Care Facility and all rights to receive the same, whether in the form of accounts receivable, contract rights, chattel paper, instruments or other rights whether now owned or held or later acquired by the Health Care Facility.

v. **"Non-Profit Borrower"** means a Borrower which is a corporation or association organized for purposes other than profit or gain for itself or persons identified therewith and which HUD finds is in no way controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom. Minimally, the entity may not make Distributions to any individual member or shareholder.

w. **"Note"** means the Multifamily/Health Care Facility Note described in the Security Instrument, including all schedules, riders, allonges and addenda, as such Multifamily/Health Care Facility Note may be amended from time to time.

x. **"Nursing Home"** means a public facility, proprietary facility or a facility owned by a private nonprofit corporation or association licensed or regulated by the State, municipality or political subdivision where the facility is located, for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing and related medical services which are prescribed by or under the direction of persons licensed by the laws of the State where the facility is located. In addition the term Nursing Home may include such additional facilities as may be authorized

by HUD for the nonresidential care of elderly individuals and others who are able to live independently, but who require care during the day.

y. **"Operator"** means any party who operates or manages the Health Care Facility under a management agreement, operating agreement or similar contract with either the Borrower or Lessee.

z. **"Personalty"** means all furniture, furnishings, equipment, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible or electronically stored personal property (other than Fixtures) which are owned or leased by the Borrower or the Lessee now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements, choses in action and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land. Personalty also includes all tangible and intangible personal property used for health care (such as major movable equipment and systems), accounts, licenses, bed authorities, certificates of need required to operate the project and to receive benefits and reimbursements under

provider agreements with Medicaid, Medicare, State and local programs, payments from health care insurers and any other assistance providers ("Receivables"); all permits, instruments, rents, lease and contract rights, equipment leases relating to the use, operation, maintenance, repair and improvement of the Health Care Facility. Generally, intangibles shall also include all cash and cash escrow funds, such as but not limited to: sinking fund accounts, depreciation reserve fund accounts, mortgage reserve fund accounts, reserve for replacement accounts, bank accounts, residual receipt accounts, all contributions, donations, gifts, grants, bequests and endowment funds by donors and all other revenues and accounts receivable from whatever source paid or payable.

aa. **"Principals"** are the following legal and natural persons having ownership interests in the Borrower: natural persons who are sole owners, joint venturers, joint tenants, tenants by the entirety, trustees or beneficiaries of trusts, and all general partners; in the case of limited partnerships, limited partners having a twenty-five (25%) percent or more interest in the partnership; in the case of public or private corporations or governmental entities, the president, vice president, secretary, treasurer, and all other executive officers who are directly responsible to the board of directors, or any equivalent governing body, as well as all directors and each stockholder having a ten (10%) percent or more interest in the corporation; in the case of a Limited Liability Company (LLC) or a Limited Liability Partnership (LLP), all managing members or partners, all

managers, and all members or partners with a ten (10%) percent or greater governance interest or a twenty-five (25%) percent or greater financial interest.

bb. **“Project”** means the Mortgaged Property and all other assets of whatever nature or wherever located, used in, owned by or leased by the Borrower or the Lessee in conducting the business on the Mortgaged Property, which business is providing health care facilities and other related activities.

cc. **“Property Jurisdiction”** is (are) the jurisdiction(s) in which the Land is located.

dd. **“Project Revenue”** means all income derived from private pay, benefits and reimbursements under provider agreements with Medicaid, Medicare, State and local programs, payments from health care insurers and any other assistance providers, all rents, charges and fees received from leasing space on the Mortgaged Property, all contributions, donations, gifts, grants, bequests and endowment funds by donors and all other revenues received from any source paid or unpaid, including but not limited to all accounts receivable, undisbursed funds in Surplus Cash, Residual Receipts, escrow accounts and other assistance available for Project operation.

ee. **“Public Body Borrower”** means a Federal instrumentality, a State or political subdivision thereof, or an instrumentality of a State or a political subdivision thereof, which certifies that it is not receiving financial assistance from the United States exclusively pursuant to

the United States Housing Act of 1937 (with the exception of projects assisted or to be assisted pursuant to Section 8 of such Act) and which is acceptable to HUD.

ff. **“Reasonable operating expense”** means an expense which arises from the everyday operation and maintenance of the Project and which primarily benefits the Project as opposed to the Borrower.

gg. **“Receivables”** means all receivables (whether from residential or non-residential space), revenues, issues, profits, and other income of the Land or the Improvements, including all revenues, gross receipts and receivables in connection with medical services and care, and all pledges, gifts, grants, bequests, contributions and endowments, parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due.

hh. **“Residual Receipts”** is a term that applies to certain funds held by Non-Profit, Public Body and Limited Dividend Mortgagors whose Notes are insured or held by HUD pursuant to Section 232 of the National Housing Act. Residual Receipts are calculated by determining an amount of Surplus Cash (defined below).

After the calculation of Surplus Cash, as described below, the Borrower may make any Distributions permitted by this Agreement, HUD regulations and Directives. “Residual Receipts” will be the restrictive cash held by Section 232

Non-Profit, Public Body, and Limited Dividend Mortgagors remaining after any allowable Distributions. The use of these Residual Receipts is restricted under this Agreement.

ii. **“Security Instrument”** means the Multifamily/Health Care Mortgage, Deed of Trust Form HUD-94000M, or other designation as appropriate by Property Jurisdiction, Security Agreement, and any other security for the Indebtedness and shall be deemed to be the mortgage as defined by the National Housing Act, as amended, implementing regulations and Directives.

jj. **“Sinking Fund Agreement” or “Depreciation Reserve Fund”** means an agreement between the Borrower and Lessee, if applicable and the Lender, in which deposits are made into a separate depreciation reimbursement account to pay future principle payments on the Note, where Medicaid or other third-party reimbursement is on a depreciation plus interest basis.

kk. **“Surplus Cash”** means any cash plus amounts receivable (earned in the applicable fiscal period) remaining after:

(1) The payment of: (i) all sums immediately due or currently required to be paid under the terms of the Note, the Security Instrument and this Agreement due on the first day of the month following the end of the fiscal period; including without limitation, all amounts required to be deposited in the Reserve for Replacement, sinking fund or other reserves as may be required by HUD; and (ii) all other obligations of the Project (accounts payable and accrued, unescrowed expenses) unless funds for

payment are set aside or deferment of payment has been approved by HUD, and

(2) The segregation and recording of: (i) an amount equal to the aggregate of all special funds required to be maintained by the Borrower; (ii) the greater of the Borrower’s total liability or the amount held by the Borrower for tenant security deposits; and (iii) all accounts and accrued items payable within thirty (30) days after the end of the fiscal period.

ll. **“State”** includes the several States and Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

mm. **“Taxes”** means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, could become a lien on the Land or the Improvements.

II. CONSTRUCTION

2. CONSTRUCTION FUNDS. The Borrower shall keep construction funds of the Mortgaged Property separate and apart from operating funds of the Mortgaged Property.

3. UNPAID OBLIGATIONS. Upon final endorsement of the Note, Borrower shall have no unpaid obligations in connection with the purchase of the Mortgaged

Property, the construction of the Mortgaged Property, or with respect to the Security Instrument insured by HUD except such unpaid obligations, as have the written approval of HUD as to terms, form and amount.

4. MORTGAGEE'S CERTIFICATE.

The Borrower shall be bound by the terms of the Mortgagee's Certificate insofar as it establishes or reflects obligations of the Borrower and the Borrower agrees that the fees and expenses enumerated in that Certificate have been fully paid or payment has been provided for in the Certificate and that all funds deposited with the Lender will be used for the purposes set forth in the Certificate.

5. CONSTRUCTION

COMMENCEMENT. The Borrower shall not commence, and has not commenced, construction of the Mortgaged Property prior to HUD endorsement of the Note, except that this Section 5 is not applicable if HUD has given prior written approval to an early start of construction, or if this Project is an Insurance Upon Completion or a refinance.

6. DRAWINGS AND

SPECIFICATIONS. The Mortgaged Property shall be constructed in accordance with the terms of the Construction Contract, if any, and with the "Drawings and Specifications."

7. REQUIRED PERMITS. The Borrower shall obtain all necessary building and other permits and the Mortgaged Property shall not be occupied or used by any resident or user without the prior written approval of HUD

and from all other legal authorities having jurisdiction of the Mortgaged Property.

8. OUTSTANDING OBLIGATIONS.

The Borrower shall have no obligations as of the date of this Agreement except those approved by HUD and, except for those approved obligations, the Land has been paid for in full and is free from any liens or purchase money obligations.

9. ACCOUNTING REQUIREMENTS.

The Borrower shall submit an accounting to HUD for all receipts and disbursements during the period starting with the date of first occupancy of the Mortgaged Property and ending, at the option of the Borrower, either on (a) the last day of the month in which the Mortgaged Property is determined by HUD to be acceptably completed; or (b) sixty days from the date the Mortgaged Property is determined by HUD to be acceptably completed. The excess of project income over property disbursements, as determined by HUD, shall be treated as a recovery of construction cost.

III. FINANCIAL MANAGEMENT

10. PAYMENTS. The Borrower shall make promptly all payments due under the Note and Security Instrument and, if a lease of the Project is involved, in addition, Lessee shall make all payments required under the Lease consistent with the terms of the Lease.

11. RESERVE FOR REPLACEMENT FUND. The Borrower shall establish and maintain a Reserve for Replacement account for defraying

certain costs for replacing major structural elements and mechanical equipment of the Project or for any other purpose. The Reserve for Replacement shall be bifurcated, as set forth in the Commitment, to cover (1) the costs associated with the replacement of major moveable equipment and (2) the costs associated with major repairs to the physical structure of the Project. The use of a bifurcated fund will ensure that the monies in the Reserve for Replacement are sufficient to pay for the costs associated with not only the replacement of major moveable equipment but also for major repairs to the physical structure of the Project. Separate sub-accounts shall be maintained within the Reserve for Replacement and monies in these two accounts shall not be commingled. Lender shall ensure that amounts are withdrawn from a particular sub-account only for use consistent with that particular sub-account as approved by HUD.

a. The Reserve for Replacement shall be held by the Lender or by a safe and responsible depository designated by the Lender pursuant to the requirements of the contract of mortgage insurance. Such funds shall at all times remain under the control of the Lender, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America or in such other investments as may be allowed by HUD.

b. The Borrower shall deposit at endorsement of the Note, if applicable, (1) an initial amount of \$_____ in the sub-account designated to cover the costs associated with the replacement of

major moveable equipment, and (2) an initial amount of \$_____ in the sub-account designated to cover the costs associated with major repairs to the physical structure of the Project; and the Borrower shall deposit (1) a monthly amount of \$_____ to cover the costs associated with the replacement of major moveable equipment, and (2) a monthly amount of \$_____ to cover the costs associated with major repairs to the physical structure of the Project, concurrently with the beginning of payments towards amortization of the Note unless a different date or amount is established by HUD. At least every ten years, starting from the date of endorsement, and more frequently at HUD's discretion, the Borrower shall submit a written analysis of its use of the Reserve for Replacement during the prior ten years and the projected use of the Reserve for Replacement funds during the coming ten years to HUD. The amount of the monthly deposit may be increased or decreased from time to time at the written direction of HUD without a recorded amendment to this Agreement.

c. The Borrower shall carry the balance in this fund on the financial records as a restricted asset. The Reserve For Replacement shall be invested in interest bearing accounts or investments, and any interest earned on the investment shall be deposited in the Reserve for Replacement for use by the Project in accordance with this Section 11.

d. Disbursements from such fund shall only be made after consent, in writing, of HUD. In the event of a Declaration of Default under the terms of the Security

Instrument, pursuant to which the Indebtedness has been accelerated, a written notification by HUD to the Borrower of a violation of this Agreement or at such other times as determined solely by HUD, HUD may direct the application of the balance in such fund to the amount due on the Indebtedness as accelerated or for such other purposes as may be determined solely by HUD.

e. Where the Project is already subject to a Security Instrument insured or held by HUD as of the date hereof and this Agreement is now being executed by the Borrower as of the date hereof, the Reserve for Replacement now to be established shall be equal to the amount due to be in such fund under existing Agreements or charter provisions, and payments hereunder shall begin with the first payment due on the Security Instrument after acquisition, unless some other method of establishing and maintaining the fund is approved in writing by HUD.

12. SINKING FUND. Where Medicaid or other third-party reimbursement is on a depreciation plus interest basis, the Borrower and Lessee, if applicable, shall make deposits to the Lender or a depository satisfactory to the Lender under the terms of a Sinking Fund Agreement. The Borrower and Lessee, if applicable, shall comply with the HUD requirements pertaining to the Sinking Fund Agreement as set forth in the Mortgagee's Certificate. Monies in the Sinking Fund will be used to make payments of principal on the Note in later years to the extent that such principal payment exceeds the amount of

depreciation reimbursement available for payment to principal at that time.

a. The Sinking Fund Agreement shall provide that in the event of a default under the Security Instrument pursuant to which the Note has been accelerated, HUD may apply or authorize the application of the balance of such fund to the amount due on the Note as accelerated.

b. The Borrower and Lessee, if applicable, shall prepare and file with the Lender by October 1 of each year, a depreciation schedule reviewed by the Borrower's Independent Public Accountant showing the total projected reimbursement for depreciation and amount payable for principal payments coming due in each fiscal year including the current fiscal year.

c. The Mortgagee's Certificate requires the Lender to prepare and file with the Borrower by January 1 of each year, a funding schedule reflecting the amount required to be deposited in the Sinking Fund Account in each project fiscal year, and the cumulative balance in the account at the end of each such project fiscal year. Sums shall be deposited monthly into the account within fifteen (15) days of the close of each month, and shall commence upon the earlier of the commencement of amortization, as established in the commitment issued by HUD, or the initial receipt by the Borrower and the Lessee, if applicable, of depreciation reimbursement from any third-party payer. Such fund must at all times be held by or under the control of the Lender, and must be invested in a manner that conforms to the same standards established by HUD for the investment of reserve for replacement funds.

d. In the event of any conflict or inconsistency between the Sinking Fund Agreement and the Security Instrument, Note, Regulatory Agreement, applicable regulations and Directives, the said Security Instrument, Note, Regulatory Agreement, regulations and Directives will control.

e. Nothing in this Agreement shall impair or prejudice any right that HUD may have with respect to the Sinking Fund, particularly relating to the duty of the Lender to hold such funds for and on behalf of the Borrower.

f. Any Lease must contain provisions consistent with these requirements and all Leases and Operating Agreements must be reviewed and approved in writing by HUD.

g. In the event of any financial default by the Borrower, HUD is authorized hereby to direct the Lender to cure such default with monies from the Sinking Fund.

h. If the State changes the reimbursement system and the Project is negatively affected, HUD may authorize an amended amortization schedule with respect to contributions to the Sinking Fund.

13. RESIDUAL RECEIPTS. Section 232 Non-Profit, Public Body, and Limited Dividend Mortgagors shall establish and maintain, in addition to the Reserve for Replacement, a Residual Receipts Fund by depositing thereto, with the Lender, the Residual Receipts, as defined herein, within ninety (90) days after the end of the semiannual or annual fiscal period within which such receipts are

realized. Such fund shall be held by the Lender or by a safe and responsible depository designated by the Lender in an interest bearing account. The Residual Receipts shall be under the control of HUD, and shall be disbursed only on the direction of HUD, who shall have the power and authority to direct that the Residual Receipts, or any part thereof, be used for such purpose as it may determine. Any Lease must contain payment provisions covering these deposits as part of the Lease payments.

14. PROJECT PROPERTY AND OPERATION; ENCUMBRANCES.

(a) The Borrower shall deposit all receivables and other receipts of the Project and all receivables and other receipts of the Project in connection with the financing of the Project, including equity or capital contributions, in the name of the Project in a federally insured depository or depositories and in accordance with Directives. Such funds shall be withdrawn only in accordance with the provisions of this Agreement for reasonable and necessary expenses of the Project or for distribution of Surplus Cash or as reimbursement of advances as permitted by Sections 15 and 16 below. Any person or entity receiving Mortgaged Property other than for payment of reasonable and necessary expenses or repairs or authorized Distributions of Surplus Cash shall immediately deliver such Mortgaged Property to the Project and failing so to do shall hold such Mortgaged Property in trust. (b) The Borrower, except for natural person Mortgagors, shall not engage in any business or activity, including the operation of any other Project, or incur any liability or obligation

not in connection with the Project, nor acquire or contract to enter into any affiliation with any party. (c) The Borrower shall satisfy or obtain a release of any mechanic's lien, attachment, judgment lien, or any other lien which attaches to any real or personal property of the Project or is used in its operation. (d) Delinquent tax penalties shall not be charged to the Project.

15. DISTRIBUTIONS. The Borrower shall not make, or receive and retain, nor allow any Affiliate to receive or retain any Distribution of assets or any income of any kind of the Project, except from Surplus Cash. Distributions are governed by the following conditions:

a. No Distribution shall be made from borrowed funds. Distributions shall not be taken prior to the completion of the Project. Distributions shall not be taken after HUD has given notice to the Borrower of a violation under this Agreement or a default has been declared under the Note or Security Instrument. Distributions shall not be taken when a Project is under a forbearance agreement.

b. No Distribution shall be made when either (i) necessary services (utilities, trash removal, security, lawn service or any other services which the Borrower is required to provide) have not been provided, which failure the Borrower should have known about in the exercise of due care; (ii) notices of physical repairs or deficiencies (including but not limited to building code violations) by other Federal, State or local governing bodies and/or by HUD have been issued and remain unresolved to the satisfaction of the issuing public body or

(iii) the Borrower has been notified by HUD, the Lender or other Federal, State or local governing body that physical repairs and/or deficiencies exist and the Borrower has not corrected or cured the identified items to HUD's satisfaction. HUD may permit Distributions when there are minor or contested local code violations on a case-by-case basis.

c. Any Distribution of any funds of the Project, which the party receiving such funds is not entitled to retain hereunder, shall be returned to the Project account immediately.

d. All allowable Distributions shall be made only after the end of a semiannual or annual fiscal period, and only as permitted by the law of the applicable jurisdiction. All such Distributions to Section 232 Limited Distribution Mortgages in any one fiscal year shall be limited to 6 percent on the initial equity investment, as determined by HUD, or to such other amounts as may be specified in Directives and the right to such Distributions shall be cumulative. No Distributions may be taken in the case of Section 232 Public Body or Nonprofit Mortgages unless permitted by regulation or Directives. Distributions must be taken out of all Project accounts by all other Borrowers within the accounting period immediately following the computation of Surplus Cash and, if not taken within the identified period, these funds may only be used for reasonable and necessary Project operating expenses and repairs. The computation of Surplus Cash must be prepared at the end of the semiannual or annual fiscal period.

e. Equity or capital contributions shall not be reimbursed from project accounts without the prior written approval of HUD.

16. REIMBURSEMENT OF

ADVANCES. Any advances made by the Borrower, on behalf of the Borrower, or for the Borrower must be deposited into the Project account. The Borrower or any entity which advances funds on behalf of the Borrower or for the Borrower for reasonable and necessary operating expenses or repairs may be reimbursed from Surplus Cash at the end of the annual or semiannual period. Such repayment is not considered a Distribution. Monthly reimbursement of the Borrower or any entity that advances funds on behalf of the Borrower or for the Borrower may be allowed with prior written approval by HUD.

17. FINANCIAL ACCOUNTING. The Borrower shall keep the books and accounts of the operation of the Mortgaged Property in accordance with the requirements of Generally Accepted Accounting Principles (GAAP) and of HUD. The books and accounts must be complete, accurate and current at all times. Posting must be made at least monthly to the ledger accounts, and year-end adjusting entries must be posted promptly in accordance with sound accounting principles. Any undocumented Distribution or expense shall be an ineligible project expense, unless otherwise determined by HUD. Books, accounts and records shall be open and available for inspection by HUD, after reasonable prior notice, during normal office hours, at the Project or other mutually agreeable location.

18. BOOKS OF MANAGEMENT

AGENTS. The books and records of management agents, Lessees, Operators, managers and Affiliates, as they pertain to the operations of the Project, shall be maintained in accordance with GAAP and shall be open and available to inspection by HUD, after reasonable prior notice, during normal office hours, at the Project or other mutually agreeable location. Every contract executed on behalf of the Project with any of the aforesaid parties shall include the provision that the books and records of such entities shall be properly maintained and open to inspection during normal business hours by HUD at the Project or other mutually agreeable location.

19. ANNUAL FINANCIAL AUDIT.

Within ninety (90) days, or such longer or shorter period established in writing by HUD, following the end of each fiscal year, the Borrower shall furnish HUD and the Lender with a complete annual financial report based upon an examination of the books and records of the Borrower prepared in accordance with GAAP, audited in accordance with Generally Accepted Auditing Standards (GAAS) and Government Auditing Standards (GAS) and any additional requirements of HUD unless the report is waived in writing by HUD. If the Borrower fails to submit the annual financial report within ninety (90) days of said due date, HUD may thereafter hire a Certified Public Accountant to prepare the report at the expense of the Borrower. The report shall include a certification in content and form prescribed by HUD and certified by the Borrower. The report shall be prepared and certified by a Certified Public

Accountant who is licensed or certified by a regulatory authority of a State or other political subdivision of the United States, which authority makes the Certified Public Accountant subject to regulations, disciplinary measures, or codes of ethics prescribed by law. The Certified Public Accountant must have no business relationship with the Borrower except for the performance of the audit and tax preparation unless HUD expressly authorizes other relationships. Auditing costs and tax preparation costs may be charged as an authorized expense to the Mortgaged Property only to the extent they are required of the Borrower itself by State law, the Internal Revenue Service (IRS), the Securities and Exchange Commission, or HUD. Neither IRS audit costs nor costs of tax preparation for the Borrower's partners, members, shareholders, or other persons receiving Distributions from the Borrower may be charged to the Mortgaged Property as a Project expense. Non-profit Mortgagors are to follow audit requirements specified in OMB Circular A-133, as revised.

IV. PROJECT MANAGEMENT

20. EQUIPMENT. The Borrower and Lessee, if applicable, shall, pursuant to HUD regulations, and State and local law, suitably equip the Project as a Nursing Home, Intermediate Care Facility, Board and Care Home and/or Assisted Living Facility, as designated in the commitment. The Borrower and Lessee, if applicable, shall perform all obligations of any chattel mortgage, conditional sale, lease or lease-purchase agreement, or other type of financing arrangement designed to

acquire equipment for the Project. Any plan for the acquisition of equipment (other than outright purchase) must be approved in writing by the Lender and HUD and shall contain appropriate provision(s) extending to the Lender and its successors or assigns, the option to assume such financing (or leasing) obligation of the Borrower upon default. Further, such financing (or leasing) arrangement shall require the vendor-lessor to furnish written notice of default to the Lender and HUD before exercising any rights or remedies otherwise available to the vendor-lessor. The Borrower shall execute and record a security agreement, chattel mortgage or other appropriate security arrangement (as determined by the Lender and HUD) in favor of the Lender covering the Borrower's interest in all equipment and other Personalty unique to a Health Care Facility except for such equipment and Personalty as HUD may exempt from such coverage, in writing. The security instrument for such Personalty shall provide that a default in the terms of the Note and Security Instrument upon the Land shall also constitute a default thereunder.

21. LICENSURE. Any necessary license, Bed Authority or other Governmental Approval required to operate the Project and to receive benefits under a provider agreement with Medicaid, Medicare or other assistance provider relied upon by HUD in insuring the Note, shall be maintained in full force by the Borrower, and the Borrower shall maintain such provider agreements, except where such licenses, Bed Authority, Governmental Approval or provider agreements are provided and maintained by Lessee or any other party under specific provisions

of the Lease or any other agreement. The Lender and HUD shall be provided with the results of any and all licensing inspections. Any problems or violations of State or local requirements must immediately be brought to the attention of the Lender and HUD in writing. All parties hereto recognize and agree that all necessary licenses, Bed Authority and Governmental Approvals are tied to the Project and cannot be separated from the Project without the prior written approval of both the Lender and HUD.

22. BED CAPACITY. Project bed capacity and Bed Authority shall not be reduced or expanded, nor shall the Borrower and the Lessee, if applicable, cause or allow such capacity or Bed Authority to be reduced or expanded, or converted to any use not originally authorized by HUD at endorsement of the Note for mortgage insurance, without prior HUD approval.

23. MORTGAGED PROPERTY AND REVENUE. The Mortgaged Property shall not be pledged, assigned, transferred, conveyed, sold or otherwise obligated without HUD's prior written approval regardless of any approval by the Lender. In addition, in the event HUD declares a default under terms of this Agreement or the Lender declares a default under the Security Instrument::

a. HUD may direct the Lender to take immediate possession and use of such Mortgaged Property upon HUD's Declaration of Default and notification of the Borrower or HUD may, with the approval of the Lender or after an assignment of the Security Instrument to HUD, take immediate possession and use of such Mortgaged Property and expend

or dispose of such Mortgaged Property at the discretion of HUD. Such assignment shall be made without compensation from HUD or any other party, and shall include the following collateral:

i. Project Revenue, as that term is defined herein, and

ii. Government Approvals (as that term is defined herein) except as the jurisdiction may prohibit such assignment; and

b. These requirements also apply to any operating agreement, management agent contract, managing agreement or contract or Lease for operation of the Project.

24. PROHIBITION OF ADDITIONAL FEES. The Borrower shall not charge any Health Care Facility resident or prospective Health Care Facility resident an admission fee, founders fee, continuing care retirement community fee, life-care fee or similar payment pursuant to any agreement to furnish Project accommodations or services to persons making such payments.

25. NOTIFICATION. The Borrower, and/or the Lessee, and/or the Operator, as applicable, shall immediately notify in writing the Lender and HUD of any suspension or termination of funding under a provider agreement with Medicaid, Medicare, or any other assistance from any source whatsoever within 7 days of Borrower's notification or knowledge of such suspension or termination. Likewise, Borrower and/or Lessee and/or Operator, as applicable, shall notify the Lender and HUD in writing of any violation of any State or federal requirement pertaining to the operation of

the Health Care Facility. Further, Borrower, and/or Lessee, and/or Operator, as applicable, shall notify HUD of any suspension or revocation of the license or of any moratorium on admissions or of any State-imposed delays in payment. In all cases full documentation must be furnished which includes all correspondence with such federal and State authorities.

26. PRESERVATION, MANAGEMENT AND MAINTENANCE OF THE MORTGAGED PROPERTY.

The Borrower (a) shall not commit Waste under the Security Instrument nor permit impairment or deterioration of the Mortgaged Property, (b) shall not abandon the Mortgaged Property, (c) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as HUD may approve in writing, whether or not litigation or insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair, and (d) shall keep the Mortgaged Property in decent, safe, sanitary condition and good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality. Obligations (a) through (d) of this Section 24 are absolute and unconditional and are not limited by any conditions precedent and are not contingent on the availability of financial assistance from HUD or on HUD's performance of any administrative or contractual obligations. The Mortgaged Property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers and instruments must also be maintained in

reasonable condition for proper audit and subject to examination by HUD at the Project or other mutually agreeable location. Full documentation shall be maintained to demonstrate that residency of an ALF is restricted as set forth in the definition above. In the event all or any of the buildings covered by the Security Instrument shall be destroyed or damaged by fire, by an exercise of the power of eminent domain, by failure of warranty, or other casualty, the money derived from any settlement, judgment, or insurance on the Mortgaged Property shall be applied in accordance with the terms of the Security Instrument or as otherwise may be directed in writing by HUD.

27. FLOOD HAZARDS. If the Improvements are located in a special flood hazard area, the Borrower shall maintain flood insurance covering the Improvements in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, as amended, or its successor legislation, whichever is less, provided that the amount of flood insurance need not exceed the outstanding principal balance of the Note, and flood insurance need not be maintained beyond the term of the Note.

28. MANAGEMENT AGREEMENT. The Borrower and/or the Lessee, as applicable, may, with the prior written approval of HUD, execute a management contract, management agent agreement or operating agreement or other document outlining

procedures for managing or operating the Mortgaged Property. Such agreement or document must be acceptable to HUD and approved in writing by HUD. The requirements of these provisions will be applicable to any party to a management contract or operating agreement or management agent or operator contract executed in connection with the Project. All Operators shall execute this instrument; however, failure to so execute shall in no way impair or prejudice the powers and rights of HUD with respect to the applicability and enforceability against such parties who fail to execute this instrument. Management agents normally will not be required to execute this instrument.

29. ACCEPTABILITY OF MANAGEMENT OR OPERATION OF THE MORTGAGED PROPERTY. The Borrower shall provide management or operation of the Mortgaged Property in a manner deemed to be acceptable by HUD. At HUD's discretion, HUD may require replacement of the management or operation or require the Borrower to conform the Project to HUD's overall management and/or operation policies.

30. TERMINATION OF CONTRACTS. Any management contract, management agent agreement or operating agreement entered into by the Borrower, Lessee or any other third-party vendor contract pertaining to the Mortgaged Property shall contain a provision that the contract shall be subject to termination without penalty and without cause upon written request by HUD and shall contain a provision which gives no more than a thirty day notice of termination. Upon such

request, the Borrower shall immediately arrange to terminate the contract, and the Borrower shall also make arrangements satisfactory to HUD for continuing acceptable management of the Mortgaged Property effective as of the termination date of the contract.

31. CONTRACTS FOR GOODS AND SERVICES. The Borrower and/or Lessee and/or Operator, as applicable, shall obtain contracts for goods, materials, supplies, and services (hereinafter referred to as "goods and services") at the lowest possible cost (including contracts for laundry services where laundry services are provided), considering quality, durability, and scope of work, and on terms most advantageous to the Mortgaged Property. Such expenses may not exceed amounts customarily paid in the vicinity of the Land for the goods and services received. Reasonable and necessary expenses do not include amounts paid for betterments or Improvements unless determined by HUD to be prudent and appropriate. When acquiring goods and services whose usual costs are expected to exceed the greater of \$10,000 or 5 percent of the gross annual revenue of the Mortgaged Property, the Borrower and/or Lessee and/or Operator, as applicable, shall solicit written cost estimates to ensure that prices paid by the Borrower and/or Lessee and/or Operator, as applicable, for goods and services, including the preparation of the annual audit, are competitive with prices paid in the area for goods and services of similar quality. All contracts, including but not limited to, contracts for goods and services purchased from individuals or companies affiliated with the Borrower

and/or Lessee and/or Operator, as applicable, shall be at costs not in excess of those that would be incurred in making arms-length purchases on the open market. The Borrower and/or Lessee and/or Operator, as applicable, shall keep copies of all written contracts or other instruments that affect the Mortgaged Property, all or any of which may be subject to inspection and examination by HUD at the Project or other mutually agreeable location.

32. COMMERCIAL (NON-RESIDENTIAL) LEASES. No portion of the Mortgaged Property shall be leased for any commercial purpose or use without receiving HUD's review of all lease instruments and HUD's prior written approval.

33. RESPONSIVENESS TO INQUIRIES. At the request of HUD, the Borrower and/or Lessee and/or Operator, as applicable, shall promptly furnish operating budgets and bed use occupancy, accounting and other reports and give specific answers to questions upon which information is desired relative to income, assets, liabilities, contracts, operation, and conditions of the Mortgaged Property and the status of the Security Instrument.

34. COMPLIANCE WITH LAWS.

a. The Borrower and/or Lessee and/or Operator, as applicable, shall comply with all applicable: laws; ordinances; regulations; requirements of any governmental authority; lawful covenants and agreements (including the Security Instrument) recorded against the Mortgaged Property; the National Housing Act; regulations and

Directives of HUD; including but not limited to those of the foregoing pertaining to: health and safety; maintenance of the requisite level of professional liability insurance as determined by HUD from time to time; construction of improvements on the Mortgaged Property; fair housing; civil rights; zoning and land use; leases; lead-based paint maintenance requirements of 24 CFR Part 35 and, with respect to all of the foregoing, all subsequent amendments, revisions, promulgations or enactments. The Borrower and/or Lessee and/or Operator, as applicable, and/or Lessee and/or Operator, as applicable, shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 34. The Borrower and/or Lessee and/or Operator, as applicable, shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger the residents or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise impair the lien created by the Security Instrument or Lender's interest in the Mortgaged Property. The Borrower and/or Lessee and/or Operator, as applicable, represents and warrants to HUD that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

b. HUD and/or Lessee and/or Operator, as applicable, shall be entitled to invoke any remedies available by law to redress any breach or to compel compliance by the Borrower with these requirements,

including any remedies available hereunder.

V. LEASE OF HEALTH CARE FACILITY

35. LEASE OF FACILITY. In cases where a Health Care Facility is leased to any entity (Lessee), the following additional requirements are applicable:

a. Wherever necessary in order to regulate both the Lessee and the Borrower in the same fashion as the Borrower is obligated where there is no lease, the Lessee and the Borrower are herein regulated where, by virtue of the lease, the Lessee holds rights, powers or authorities to act which are contemplated to be held by the Borrower in the absence of a lease. In instances where such powers are held by the Lessee, the term Borrower shall be read to also include Lessee herein. The intent is, and the construction of this subsection shall be, to obligate both the Lessee and the Borrower under this instrument to the extent of their rights, powers or authorities to act under the Lease and to make any Lease consistent with the requirements of this instrument.

b. Within ninety (90) days, or such longer or shorter period established in writing by HUD, following the end of each fiscal year, the Lessee shall furnish HUD and the Borrower with a complete annual financial report based upon an examination of the books and records of the Lessee prepared in accordance with GAAP, audited in accordance with Generally Accepted Auditing Standards (GAAS) and Government Auditing Standard (GAS) and any additional requirements of HUD unless the report is waived in writing by HUD. If the

Lessee fails to submit the annual financial report within ninety (90) days of said due date, the Borrower may thereafter hire a Certified Public Accountant to prepare the report at the expense of the Lessee or the Borrower. The report shall include a certification in content and form prescribed by HUD and certified by the Lessee. The report shall be prepared and certified by a Certified Public Accountant who is licensed or certified by a regulatory authority of a State or other political subdivision of the United States, which authority make the Certified Public Accountant subject to regulations, disciplinary measures, or codes of ethics prescribed by law. The Certified Public Accountant may have no business relationship with the Lessee except for the performance of the audit and tax preparation unless HUD expressly authorizes other relationships. Both for profit and non-profit Lessees are to follow audit requirements specified in the HUD Consolidated Audit Guide for Audits of HUD Programs prescribed by HUD.

c. The Lessee, any successors, assigns and subsequent Lessees must sign this Agreement; however, any failure to so sign or formally acknowledge this Agreement shall in no way be a bar to this Agreement being fully binding upon and enforceable against the Lessee, any successors, assigns and subsequent Lessees.

d. The lease and any and all extensions, modifications and renewals thereof, and all of the Lessee's rights and interest thereunder, are hereby subjected and subordinated to the Security Instrument securing the Note

and to this Agreement between the Lessee of the Project and HUD, and, in the event of a conflict between the Lease and the Security Instrument, Note or Regulatory Agreement, the Security Instrument, Note or Regulatory Agreement shall control.

e. The Lessee shall be the sole user and/or operator of the improvements and equipment that is stipulated in the lease. The Lessee shall not be an Affiliate of, or have any other Identity of Interest (as defined by HUD) with, the Borrower, Lender or any other party to the Security Instrument transaction except with the prior written approval of HUD. Where there is an affiliation between the Borrower and the Lessee, the Lessee shall, at the time of cost certification, submit an audited operating statement in accordance with current requirements and instructions.

f. Any license, Bed Authority or other Governmental Approval required to operate the Project and to receive benefits under a provider agreement with Medicaid, Medicare or other assistance relied upon by HUD to insure the Security Instrument, and such provider agreements, shall be secured and maintained in full force by the Lessee, except to the extent to which the Borrower is specifically made responsible for such license, Bed Authority, Governmental Approval or provider agreements and their maintenance. See Section 25 above with respect to notification to Lender and HUD which shall be read in connection with this provision.

g. Consistent with, and in addition to, the requirements of Section 19, the

Lessee shall, within sixty (60) days following the end of each fiscal year, furnish to the Borrower a complete annual audited financial report on the operation of the Health Care Facility, prepared in accordance with GAAP and based upon examinations of the books and records the Lessee has established and maintained for the operation of the facility. The Lessee acknowledges and understands that this annual audited financial report is a part of the consolidated report that the Borrower must submit to HUD. If the Lessee fails to provide the Borrower with the report, Lessee understands that the Borrower may retain a certified public accountant to prepare the report at the expense of the Lessee and Borrower, Lender or HUD may terminate the Lease for continued non-compliance.

h. As security to HUD for approving the lease, the Lessee shall assign to Borrower, the Lender or HUD, as directed by HUD, any Mortgaged Property in which the Lessee has any interest under the lease or otherwise all in accordance with and in addition to the requirements of Section 232. This includes (but is not limited to) major and minor moveables, the CoN, the license, any and all rights to receivables and other income, and other personalty necessary to the continued operation and value of the Health Care Facility.

i. Lease payments to the Borrower shall be renegotiated within ninety (90) days of HUD's written request at a sufficiently higher amount to permit the Borrower to make all payments due under the Note, including escrow deposits for taxes, insurance, and special assessments; deposits to the

Sinking Fund Account, if applicable; deposits to the reserve for replacement fund; and the Residual Receipts Fund, if applicable, and to perform maintenance required by terms of the Security Instrument and this Agreement for which the Lessee is not obligated to perform under terms of the Lease, if at the end of any the Borrower's annual operating period, where the payments under the Lease have not be sufficient for such purposes.

j. Payments under terms of the lease shall be made when due.

k. Any transfer or change in ownership of the Lessee entity exceeding twenty-five (25) percent financial or governance interest and any transfer or change of the management, operation or control of the Project shall have prior written HUD approval.

l. All payments to Borrower by the Lessee shall be made to HUD upon the Lender's Declaration of Default under the terms of the Security Instrument or upon a Declaration of Default by HUD under the terms of this Agreement and at HUD's written request.

m. The lease shall be canceled without penalty after 30 days from HUD's notification to Lessee and Borrower of any violation under this Agreement, if such violation is not corrected to HUD's satisfaction within such 30 day period.

n. A Lessee shall not sublease a Health Care Facility in its entirety under any circumstances, nor can Lessee sublease commercial space to any sublessee without prior written approval by HUD.

o. A nonprofit Borrower may only lease a Health Care Facility to a nonprofit Lessee and may only use a nonprofit Operator.

p. The CoN, license and receivables and any and all other Personality shall not be transferred, pledged, hypothecated, mortgaged or securitized other than with respect to the securitization running to the Lender and HUD under the terms of the Security Instrument, the UCC Security Agreement and this instrument. The CoN, license and receivables and other Personality necessary to the operation and value of the Project must remain tied to the Project and the HUD insured loan for the duration of HUD insurance of the loan. Lessee grants Lender and HUD a power of attorney under the Lease and all related contractual documents to enforce this requirement in the event of default hereunder.

VI. ACTIONS REQUIRING THE PRIOR WRITTEN APPROVAL OF HUD

36. The Borrower, Lessee and/or Operator, if applicable, shall not without the prior written approval of HUD:

a. Convey, assign, transfer, pledge, hypothecate, encumber, or otherwise dispose of any of the Mortgaged Property or any interest therein, or permit such conveyance, assignment, transfer, pledging, hypothecation, or encumbrance or disposition, or take any action which gives rights in another to establish or maintain a lien or encumbrance against the Mortgaged Property or any interest therein; provided, however, the Borrower may,

and this provision shall not operate to require the Borrower to obtain prior written approval of HUD to, dispose of obsolete or deteriorated items of Fixtures or Personalty if the same are replaced with like items of same or greater quality or value and provided further, that this provision shall not operate to require the Borrower to obtain the prior written approval of HUD for (i) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under the Security Instrument, (ii) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code and (iii) an interest acquired by inheritance or by Court decree.

b. Enter into any contract, agreement or arrangement to borrow funds, pledge receivables to obtain lines of credit, finance any purchase or incur any liability, direct or contingent, other than for current, reasonable and necessary operating expenses and repairs.

c. Pay out any funds except from Surplus Cash, except for reasonable operating expenses and necessary repairs.

d. Pay any compensation, including wages or salaries, or incur any obligation to do so, to any officer, director, stockholder, trustee, beneficiary, partner, member, or Principal, or to any nominee thereof.

e. Enter into, change, or agree to the assignment of, any contract, agreement or arrangement for supervisory or managerial services or leases for operation of the Project in whole or in part.

f. Convey, assign, or transfer, or permit the conveyance, assignment or transfer of any interest in the Borrower, if the effect of that conveyance, assignment, or transfer is the creation or elimination of a Principal; nor convey, assign or transfer any right to receive the Receivables of the Mortgaged Property; provided, however, that this provision shall not operate to require the Borrower to obtain the prior written approval of HUD for (i) a conveyance of any interest in the Borrower at a judicial or non-judicial foreclosure sale under the Security Instrument, (ii) any interest in the Borrower becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code and (iii) an interest in the Borrower acquired by inheritance or by Court decree

g. Remodel, add to, construct, reconstruct or demolish any part of the Mortgaged Property or subtract from any Land, Fixtures, Improvements or Personalty of the Mortgaged Property.

h. Permit the use of the Mortgaged Property for any other purpose except the use for which it was originally intended, or permit commercial use greater than that originally approved by HUD.

i. Receive any endowment which is not pledged as security for its obligations to HUD or the Lender unless the endowment by its terms is restricted to a specific purpose or purposes which do not permit such a pledge.

j. Amend, revise or cancel any provision or portion of the organizational

documents of the Borrower, except for amendments or revisions simply to effect changes in interest in the Borrower which are not governed by Section 36.f.

k. Institute litigation seeking the recovery of a sum in excess of \$25,000, nor settle or compromise any action for specific performance, damages, or other equitable relief, in excess of \$25,000, nor dispose of or distribute the proceeds thereof.

l. Reimburse any party for payment of expenses or costs of the Project or for any purpose.

m. Receive any fee or payment of any kind from any managing agent, employee of the Project or of the managing agent, or other provider of goods or services of the Project.

VII. ENFORCEMENT

37. VIOLATION OF AGREEMENT. The occurrence of any one or more of the following shall constitute a Violation under this Agreement:

a. Any failure by the Borrower to comply with any of the provisions of this Agreement;

b. Any fraud or material misrepresentation or material omission by the Borrower, any of its officers, directors, trustees, general partners, members, managers or managing agent in connection with (1) any financial statement or other report or information provided to HUD during the term of this Agreement or (2) any request for HUD's consent to any proposed action,

including a request for disbursement of funds from any restricted account for which HUD's prior written approval is required; and

c. The commencement of a forfeiture action or proceeding, whether civil or criminal, which, in HUD's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair HUD's interest in the Mortgaged Property.

38. DECLARATION OF DEFAULT. At any time during the existence of a violation, HUD may give written notice of the violation to the Borrower, the Lessee and/or Operator, if applicable, by registered or certified mail, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written notice to HUD, be designated by the Borrower as its legal business address. If, after receiving written notice of a violation, that Violation is not corrected to the satisfaction of HUD either within thirty (30) days after the date such notice is mailed, or within such shorter or longer period of time set forth in said notice, HUD may declare a default under this Agreement without further notice. Upon such Declaration of Default, HUD may:

a. If HUD holds the Note, declare the whole of said Indebtedness immediately due and payable and then proceed with the foreclosure of the Security Instrument;

b. If said Note is not held by HUD, notify the holder of the Note of such default and require the holder to declare a default under the Note and Security

Instrument, and the holder after receiving such notice and demand, shall declare the whole Indebtedness due and payable and thereupon proceed with foreclosure of the Security Instrument or assignment of the Note and Security Instrument to HUD as provided in HUD regulations and Directives. Upon assignment of the Note and Security Instrument to HUD, HUD may then proceed with the foreclosure of the Security Instrument;

c. Collect all Receivables and charges in connection with the operation of the Project and use such collections to pay the Borrower's obligations under this Agreement and under the Note and Security Instrument and the necessary expenses of preserving and operating the Mortgaged Property;

d. Take possession of the Mortgaged Property, bring any action necessary to enforce any rights of the Borrower growing out of the Mortgaged Property's operation, and maintain the Mortgaged Property in decent, safe, sanitary condition and good repair;

e. Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violations of the Agreement, for the appointment of a receiver to take over and operate the Project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to HUD arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain;

f. Collect reasonable attorney fees related to enforcing the Borrower's compliance with this Agreement, and

g. With respect to Violations related to felony criminal convictions or civil judgments concerning the operation or management of the Mortgaged Property, direct the Borrower to replace any general partner, limited liability company member or non-member manager, limited liability limited partnership member, officer or director of the Borrower corporation, trustee, beneficiary of a trust, joint venturer, joint tenant or tenant in common with a natural person or entity acceptable to HUD pursuant to HUD's Participation and Compliance regulations and Directives.

39. MEASURE OF DAMAGES. The damage to HUD as a result of the Borrower's breach of duties and obligations under this Agreement shall be, in the case of failure to maintain the Mortgaged Property as required by this Agreement, the cost of the repairs required to return the Project to decent, safe and sanitary condition and good repair. This contractual provision shall not abrogate or limit any other remedy or measure of damages available to HUD under any civil, criminal or common law.

40. NONRECOURSE DEBT. Except as provided in Section 8 of the Note and Section 6 of the Security Instrument, no person or entity is liable for payments due under the Note and Security Instrument, or for payments to the Reserve for Replacement or for matters not under their control, except, notwithstanding any provision of State

law to the contrary, any person or entity is liable:

- a. For funds or property of the Project coming into its possession which, by the provisions hereof, the person or entity is not entitled to retain;
- b. For its own acts and deeds or acts and deeds of others which it has authorized in violation of the provisions hereof; and
- c. As otherwise provided by law.

VIII. MISCELLANEOUS

41. BINDING EFFECT. This instrument shall bind, and the benefits shall inure to, the respective Borrower and/or Lessee, if applicable, its heirs, legal representative, executors, administrators, successors in office or interest, and assigns, and to HUD and HUD's successors, so long as the contract of mortgage insurance continues in effect, and during such further time as HUD shall be the Lender, holder, coinsurer, or reinsurer of the Security Instrument, or obligated to reinsure the Security Instrument, or protect the residents of the Project.

42. PARAMOUNT RIGHTS AND OBLIGATIONS. The Borrower and the Lessee and/or Operator, if applicable warrant(s) that it (they) has (have) not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and

supersede any other requirements in conflict therewith.

43. SEVERABILITY. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity or the remaining portions thereof.

44. HEADINGS AND TITLES. Any heading or title of a section, paragraph or part of this Agreement is intended for convenience only, and is not intended, and shall not be construed, to enlarge, restrict, limit or affect in any way the construction, meaning or application of the covenants or provisions thereunder or under any other heading or title.

45. PRESENT ASSIGNMENT. The Borrower and/or Lessee, if applicable irrevocably and unconditionally assigns, pledges, mortgages and transfers to HUD its rights to the Receivables, charges, fees, carrying charges, Project accounts and other revenues and receipts of whatsoever sort which it may receive or be entitled to receive from the operation of the Mortgaged Property. Until a default is declared under this Agreement, revocable license is granted to the Borrower and Lessee, if applicable to collect and retain such Receivables, charges, fees, carrying charges, Project accounts and other revenues and receipts, but upon a Declaration of Default under this Agreement or under the Security Instrument, this revocable license is automatically terminated.

46. NOTICES. Any notice or other communication given or made pursuant to this Agreement to the Borrower, Lessee, or Operator, if applicable, shall be made to the following addresses:

BORROWER:

LESSEE (if applicable):

OPERATOR (if applicable):

The Borrower or Lessee may, at any time, by written notice to HUD, designate a different address to which such communications shall thereafter be directed. Said notice, and any other written notice to HUD pursuant to this Agreement, shall be delivered to the HUD field office which has jurisdiction over the Project.

47. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT. This Regulatory Agreement is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property (including all Personalty) which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, and all products and cash proceeds and non-cash proceeds thereof (collectively, "UCC Collateral"), and Borrower hereby grants to HUD a security interest in the UCC Collateral. Borrower, and Lessee (if applicable) shall execute and deliver to HUD (or the Lender acting on behalf of HUD), upon the request of HUD or the Lender, financing statements, continuation statements and amendments, in such form as HUD may require to perfect or continue the

perfection of this security interest. Borrower and/or Lessee shall pay all filing costs and all costs and expenses of any record searches for financing statements that HUD may require. Without the prior written consent of HUD, Borrower and/or Lessee shall not create or permit to exist any other lien or security interest in any of the UCC Collateral except for the first lien and security interest in favor of the Lender and HUD. If an Event of Default has occurred and is continuing, HUD shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Regulatory Agreement or existing under applicable law. In exercising any remedies, HUD may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of HUD's other remedies. This Regulatory Agreement constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture.

48.IDENTITY OF INTEREST. If the Project's application for mortgage loan insurance was processed pursuant to HUD's Multifamily Accelerated Processing ("MAP") procedures, the Borrower's Principals shall not have an identity of interest, as defined by HUD in MAP Directives, between the Borrower and the Lender.

49.APPLICABILITY. Notwithstanding any other provision in this Agreement, depending on the type of facility, there may be specific rental housing provisions (some of which may be found in the Regulatory Agreement for Multifamily Projects) that are applicable

to either an Assisted Living Facility or a Board and Care Home. Additionally, other State-imposed laws may be required where the State mandates further regulation over admission, occupancy or any other aspect of the facility. In the event such HUD and/or State mandated provisions need to be added hereto, such provisions shall be

placed in an Article IX which shall be headed, "Assisted Living Facility," or "Board and Care Home," as appropriate.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first herein above written.

BORROWER

U.S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT

(insert name)

BY: _____
Name and Title

BY: _____
Authorized Agent

Principal
Name and Title

Principal
Name and Title

LESSEE

BY: _____
Authorized Agent
Name and Title

Each signatory hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete.

This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD (acting by and through the FHA Commissioner) in insuring a multifamily rental or health care facility mortgage loan, and may be relied upon by HUD and the Commissioner as a true statement of the facts contained therein.

Name of Entity: _____

By: _____ /s/ _____

Printed Name, Title: _____

Dated: _____

By: _____ /s/ _____

Printed Name, Title: _____

Dated: _____

[ADD ADDITIONAL LINES IF MORE THAN TWO SIGNATORIES]

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. §§ 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. § 3729; and (iii) administrative sanctions, claims, and penalties under 24 C.F.R. parts 24 and 28.

NOTICE: THIS DOCUMENT MUST HAVE A LEGAL DESCRIPTION ATTACHED AND BE EXECUTED WITH ALL FORMALITIES REQUIRED FOR RECORDING A DEED TO REAL ESTATE (i.e., NOTARY/ACKNOWLEDGEMENT, SEAL, WITNESS OR OTHER APPROPRIATE FORMALITIES).